

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

MARIA F. VELEZ,	:	
Plaintiff,	:	
	:	
v.	:	CA 07-170 S
	:	
MICHAEL J. ASTRUE,	:	
COMMISSIONER OF SOCIAL SECURITY,	:	
Defendant.	:	

**REPORT AND RECOMMENDATION**

David L. Martin, United States Magistrate Judge

This matter is before the Court on the request of Plaintiff Maria F. Velez ("Plaintiff" or "Velez") to dismiss this civil action for judicial review of the decision of the Commissioner of Social Security ("the Commissioner"), denying Disability Insurance Benefits ("DIB") and Supplemental Security Income ("SSI"), under §§ 205(g) and 1631(c)(3) of the Social Security Act, as amended, 42 U.S.C. §§ 405(g) and 1383(c)(3) ("the Act"). See Plaintiff's Motion to Dismiss Plaintiff's Complaint against Defendant Commissioner (Document ("Doc.") #15) ("Motion to Dismiss"). No objection has been filed.

This matter has been referred to me for preliminary review, findings, and recommended disposition pursuant to 28 U.S.C. § 636(b)(1)(B). I recommend that Plaintiff's Motion to Dismiss be granted.

According to Plaintiff:

The present civil action was originally filed because the Commissioner had not considered new and material medical evidence pertaining to the Plaintiff's medical condition and ability to work. The Commissioner thereafter filed a Voluntary Motion to Remand under Sentence Six of 42 U.S.C. [§] 405(g) [Doc. #4]. Said Sentence provides that a Court, upon the Commissioner's own Motion, may remand to the Administration for consideration of new and

material evidence. This Honorable Court issued an Order [Doc. #6] granting the Commissioner's Motion to Remand. Under those circumstances, however, this Honorable Court retains jurisdiction over the matter during the administrative process.

The Commissioner provided Velez with a supplemental hearing in which the new and material evidence was admitted into the record and considered by the Administrative Law Judge. Thereafter, the Administrative Law Judge issued an unfavorable decision. The new and material evidence which was the original basis of this civil action has therefore been considered by the Commissioner.

Motion to Dismiss at 1-2.

Based on the foregoing, and on the representation of her counsel that Plaintiff "has had extensive conversations with her attorney regarding the reasons and consequences of a Motion to Dismiss, and wishes to proceed with a dismissal," id. at 2, the Court recommends that Plaintiff's Motion to Dismiss be granted.

#### **Conclusion**

I recommend that Plaintiff's Motion to Dismiss be granted. Any objections to this Report and Recommendation must be specific and must be filed with the Clerk of Court within ten (10) days of its receipt. See Fed. R. Civ. P. 72(b); DRI LR Cv 72(d). Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district court and of the right to appeal the district court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1<sup>st</sup> Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1<sup>st</sup> Cir. 1980).

/s/ David L. Martin  
DAVID L. MARTIN  
United States Magistrate Judge  
August 11, 2009